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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,330	11/26/2003	Ronald A. Katz	6046-101N8	9987
35554 7590 12/29/2010				
REENA KUYPER, ESQ. BYARD NILSSON, ESQ. 9229 SUNSET BOULEVARD SUITE 630 LOS ANGELES, CA 90069				
EXAMINER				
WOO, STELLA L				
ART UNIT		PAPER NUMBER		
2614				
MAIL DATE		DELIVERY MODE		
12/20/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/724,330

**Applicant(s)**

KATZ, RONALD A.

**Examiner**

Stella L. Woo

**Art Unit**

2614

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-29, 31-45 and 47-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-29, 31-45, 47-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 17-29, 31-45, 47-48, 50-57 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-61 of U.S. Patent No. 7,848,496. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 17-29, 31-45, 47-48, 50-57 of the present application are anticipated by claims 1-61 of the patent.
3. Claims 17-29, 31-45, 47-48, 50-57 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-168 of U.S. Patent No. 7,839,984. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 17-29, 31-45, 47-48, 50-57 of the present application are anticipated by claims 1-168 of the patent.
4. Claims 17-29, 31-45, 47-48, 50-57 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-91 of U.S. Patent No. 7,835,509. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 17-29, 31-45, 47-48, 50-57 of the present application are anticipated by claims 1-91 of the patent.
5. Claims 17-29, 31-45, 47-48, 50-57 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-87 of U.S. Patent No. 7,835,508. Although the conflicting claims are not identical, they are not

patentably distinct from each other because claims 17-29, 31-45, 47-48, 50-57 of the present application are anticipated by claims 1-87 of the patent.

6. Claims 17-29, 31-45, 47-48, 50-57 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-195 of U.S. Patent No. 6,323,894. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 17-29, 31-45, 47-48, 50-57 of the present application are anticipated by claims 1-195 of the patent.

7. Claims 17-29, 31-45, 47-48, 50-57 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 63-124 of copending Application No. 10/686,883. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 17-29, 31-45, 47-48, 50-57 of the present application are anticipated by claims 63-124 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 17-29, 31-45, 47-48, 50-57 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17-28, 30-36, 38, 40-41, 43, 45-46 of copending Application No. 10/724,406. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 17-29, 31-45, 47-48, 50-57 of the present application are anticipated by claims 17-28, 30-36, 38, 40-41, 43, 45-46 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 17-29, 31-45, 47-48, 50-57 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17-38, 40-50, 52-67 of copending Application No. 10/687,446. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 17-29, 31-45, 47-48, 50-57 of the present application are anticipated by claims 17-38, 40-50, 52-67 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stella L. Woo whose telephone number is (571) 272-7512. The examiner can normally be reached on Monday-Tuesday, Thursday-Friday, 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stella L. Woo/  
Primary Examiner, Art Unit 2614